

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS (Boston)

3 No. 1:23-cv-10511-WGY  
4 Vol 1, Pages 1 - 78

5  
6 UNITED STATES OF AMERICA, et al,  
7 Plaintiffs

8 vs.

9  
10 JETBLUE AIRWAYS CORPORATION, et al,  
11 Defendants

12 \*\*\*\*\*

13  
14 For Bench Trial Before:  
15 Judge William G. Young

16  
17 United States District Court  
18 District of Massachusetts (Boston)  
19 One Courthouse Way  
20 Boston, Massachusetts 02210  
21 Friday, November 3, 2023

22 \*\*\*\*\*

23 REPORTER: RICHARD H. ROMANOW, RPR  
24 Official Court Reporter  
25 United States District Court  
One Courthouse Way, Room 5510, Boston, MA 02210  
rhrbulldog@aol.com

## A P P E A R A N C E S

EDWARD WILLIAM DUFFY, ESQ.

ARIANNA MARKEL, ESQ.

AARON TEITELBAUM, ESQ.

DOJ-Atr

450 Fifth Street NW, Suite 8000

Washington, DC 20530

(202) 812-4723

Email: Edward.duffy@usdoj.gov

and

WILLIAM T. MATLACK, ESQ.

Attorney General's Office

One Ashburton Place, 18th Floor

Boston, MA 02108

(617) 727-2200

Email: William.matlack@mass.gov

For Plaintiffs United States of America and

The Commonwealth of Massachusetts

RYAN SHORES, ESQ.

Cleary Gottlieb Steen & Hamilton LLP

2112 Pennsylvania Avenue, NW

Washington, DC 20037

(202) 974-1876

Email: Rshores@cgsh.com

and

ELIZABETH M. WRIGHT, ESQ.

Cooley LLP

500 Boylston Street

Boston, MA 02116-3736

(617) 937-2349

Email: Ewright@cooley.com

and

RACHEL MOSSMAN ZIEMINSKI, ESQ.

MICHAEL MITCHELL, ESQ.

Shearman & Sterling LLP

2601 Olive Street, 17th Floor

Dallas, TX 75201

Email: Rachel.zieminski@shearman.com

For Defendant JetBlue Airways Corporation

(Continued.)

(Continued.)

JAY COHEN, ESQ.

ANDREW C. FINCH, ESQ.

Paul, Weiss, Rifkind, Wharton & Garrison

1285 Avenue of the Americas

New York, NY 10019-6064

(212) 373-3000

Email: Jaycohen@paulweiss.com

For Defendant Spirit Airlines, Inc.

## I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
---------	--------	-------	----------	---------

TREVOR YEALY

By Mr. Loevinsohn:	5		44	
--------------------	---	--	----	--

By Ms. Wright:		31		
----------------	--	----	--	--

MATTHEW KLEIN

By Ms. Riblet:	46			
----------------	----	--	--	--

By Ms. Dearborn:				
------------------	--	--	--	--

## E X H I B I T S

EXHIBIT 671.....	62
------------------	----

1 P R O C E E D I N G S

2 (Begins, 9:00 a.m.)

3 MR. DUFFY: Mr. Loevinsohn will be taking the next  
4 witness, your Honor.

5 THE COURT: You may. And let's swear the witness.

6 (TREVOR YEALY, sworn.)

7  
8 \*\*\*\*\*

9 TREVOR YEALY

10 \*\*\*\*\*  
11

12 DIRECT EXAMINATION BY MR. LOEVINSOHN:

13 MR. LOEVINSOHN: Good morning, your Honor, David  
14 Loevinsohn on behalf of the plaintiff United States and  
15 the plaintiff states.

16 At this time the plaintiffs call Trevor Yealy as a  
17 nonparty witness. Mr. Yealy is the Head of Planning and  
18 Strategy at Avelo Airlines, Incorporated.

19 Good morning to you, sir.

20 THE COURT: Well let's let him testify.

21 Would you state your full name, sir.

22 THE WITNESS: Yes, my name is Trevor Yealy.

23 THE COURT: And what do you do?

24 THE WITNESS: I'm the Head of Commercial for Avelo  
25 Airlines.

1 THE COURT: Now I have testimony. Go ahead.

2 (Laughter.)

3 Q. Mr. Yealy, we've placed the binder in front of  
4 you. We may refer to it during your examination. And  
5 I'll let you know at the right time.

6 Can you please spell your name for the record.

7 A. Trevor, T-R-E-V-O-R, and Yealy, Y-E-A-L-Y.

8 Q. And who is your current employer, Mr. Yealy?

9 A. Avelo Airlines.

10 Q. And what is your current position?

11 A. Head of Commercial.

12 Q. And how long have you been the Head of Commercial?

13 A. I've been the Head of Commercial for about two  
14 months. Before that I was the Head of Strategy and  
15 Planning for a year.

16 Q. Okay. And what are your responsibilities as Head  
17 of Commercial?

18 A. I have oversight for network planning, so route  
19 planning and aircraft scheduling. Airport relations.  
20 Charter sales and operations. And then pricing and  
21 revenue management.

22 Q. Okay, you mentioned "route planing." What does  
23 "route planning" refer to?

24 A. Selecting the cities that we fly between, new  
25 bases that we want to fly into and out of, how many

1 times a week we fly, etc.

2 Q. Okay, you also mentioned "airport relations."

3 What does that refer to?

4 A. As we go and develop relationships with new  
5 airports we intend to serve, there's a team that goes  
6 out and enters preliminary discussions and negotiations  
7 with airports to get agreements set up in place so we  
8 can operate there.

9 Q. Okay. And as part of your responsibilities as  
10 Head of Commercial, to what extent, if at all, do you  
11 stay up to date with respect to the operations of other  
12 U.S. carriers?

13 A. I stay pretty up to date with the operations of  
14 other U.S. carriers.

15 Q. Okay, and how do you stay up to date with the  
16 operations of other carriers?

17 A. We keep a weekly tab on schedule changes that are  
18 occurring throughout the industry, what other airlines  
19 are flying, entering, or exiting. Mostly focused on  
20 areas that pertain to us, regions that pertain to us.  
21 We keep a general watch on what others are doing,  
22 broadly speaking as well.

23 Q. And to what extent, if at all, do you review the  
24 public filings of other U.S. carriers?

25 A. We review them, generally speaking, after each

1     earning season, just to see what's going on.

2     Q.     You mentioned that you were previously the Head of  
3     Strategy, um -- the Head of Planning and Strategy. Do  
4     you hold any other positions at Avelo?

5     A.     Prior to being Head of Strategy and Planning, I  
6     was their Head of Financial Planning Analysis and  
7     Company Treasurer.

8     Q.     Okay. And when was Avelo founded, Mr. Yealy?

9     A.     The current incarnation of Avelo was really  
10    founded in late 2018 when Andrew Levy acquired the  
11    charter airline known as Xtra Airways or TEM  
12    Enterprises, and that was the foundation for which Avelo  
13    eventually became.

14    Q.     Okay. And, Mr. Yealy, I have a tendency to speak  
15    very quickly. I understand that a -- if you wouldn't  
16    mind slowing down just a little bit, that would be  
17    helpful.

18    A.     No problem.

19    Q.     Okay. When did Avelo start offering airline  
20    service?

21    A.     Our first flight was on April 28th, 2021.

22    Q.     How do you describe Avelo?

23    A.     We are the U.S.'s most ultra-low-cost carrier.

24    Q.     Okay. And how many aircraft does Avelo operate?

25    A.     We currently operate 16 airplanes.



1 Q. I'd like to briefly discuss other carriers. You  
2 mentioned that Avelo is an ultra-low-cost carrier. Are  
3 there any other ultra-low-cost carriers in the United  
4 States?

5 A. There are.

6 Q. What are those?

7 A. Allegiant Airlines. Spirit Airlines. Frontier  
8 Airlines. And Sun Country Airlines.

9 Q. Okay. And you mentioned Spirit, like Avelo, is an  
10 ultra-low-cost carrier. To what extent, if at all, are  
11 you familiar with their operations?

12 A. I'm familiar with Spirit's operations.

13 Q. How do you compare the size of Spirit's operations  
14 with the size of Avelo's operations?

15 A. Spirit is significantly larger than Avelo. We are  
16 quite small in the grand scheme of the U.S. industry at  
17 this point in time.

18 Q. And when you say "small," what do you mean?

19 A. We have a very small percentage of the domestic  
20 seats flying around, less than 1 percent.

21 Q. Mr. Yealy, how do you compare the types of  
22 destinations Spirit serves with those served by Avelo?

23 A. There are similar types of destinations, although  
24 we certainly target different routes from a depth  
25 perspective in terms of how we approach the route and

1     what are the cities we select and how frequently we fly  
2     between those cities. But the destinations generally  
3     are pretty similar, targeting leisure and visiting  
4     friends-and-relatives customers.

5     Q.     Okay, you mentioned "depth" there. What do you  
6     mean by "depth"?

7     A.     Spirit tends to fly routes with more frequency  
8     than we do, we get along with very little or low  
9     frequency on routes, generally speaking.

10    Q.     Okay. Mr. Yealy, are you familiar with -- well  
11    let me back up a second.

12           To what extent, if at all, do Spirit's routes  
13    differ from Avelo's with respect to the presence of  
14    other carriers on the same route?

15    A.     Generally speaking Spirit flies routes that have  
16    other airlines flying on, whereas we target many routes  
17    where other airlines are not flying between two distinct  
18    airplane pairs.

19    Q.     Are you generally familiar with JetBlue's  
20    operations?

21    A.     I am.

22    Q.     Do you have an understanding of how the customer  
23    base of JetBlue compares to the customer base of Avelo?

24    A.     Um --

25           MS. WRIGHT: Objection.

1 THE COURT: Well I'm going to allow him to answer  
2 that yes or no.

3 Do you have an understanding?

4 THE WITNESS: Generally, but not with any great  
5 specific detail.

6 Q. What is your general understanding, Mr. Yealy?

7 A. JetBlue is typically targeting leisure and VFR  
8 customers as well, those Visiting Friends and Relatives  
9 customers. They do the business component here in  
10 Boston. But, um, predominantly I believe they are  
11 targeting leisure and VFR customers.

12 Q. Mr. Yealy, in your experience, how have customers  
13 responded to the ultra-low-cost business model?

14 MS. WRIGHT: Objection.

15 THE COURT: No, he may tell us from his experience  
16 how customers have responded.

17 A. From my experience customers have responded very  
18 well to the ultra-low-cost business model. It enables a  
19 portion of the population access to air travel that they  
20 may otherwise have not had access to.

21 Q. Mr. Yealy, I'd like to briefly discuss with you,  
22 in greater detail, Avelo's ability to initiate or expand  
23 service at certain airports.

24 What resources at airports does Avelo need to  
25 initiate or expand service at that airport?

1 A. Generally speaking we need to ensure that we've  
2 got access to gates and terminal facilities, first and  
3 foremost. That's the largest challenge when entering a  
4 new airport.

5 Q. And are those resources available to Avelo at all  
6 airports in the United States?

7 A. It is case-by-case dependent on each individual  
8 airport. In some airports they are instantly available  
9 and in others it can be a challenge to get access.

10 Q. And would you --

11 THE COURT: What's the relationship between having  
12 access to a gate or gates and terminal facilities?

13 THE WITNESS: Generally speaking you need to have  
14 access to both for a carrier like ourselves. There are  
15 occasions where just an access to a gate will do,  
16 depending on how you contract services at the airport  
17 with third-parties. If it's an airport where we employ  
18 our own crew members, then you would need space so that  
19 they have a break room. We could store parts and other  
20 items at the airport. If we're using a third-party  
21 provider, they may already have the space, so we might  
22 not be as heavily dependent on needing space in addition  
23 to access to a gate.

24 THE COURT: How does hangar space, if that makes  
25 sense, I mean someplace to park the planes or maintain

1 the planes, do you need that at every airline -- every  
2 airport in which you fly?

3 THE WITNESS: So we do not need that at every  
4 airport we fly. Our new business model is a little  
5 unique in that our aircraft come back to our bases each  
6 and every night, so we don't leave them at airports  
7 scattered around the country. That's why we don't need  
8 parking positions, we don't need hangar space or access,  
9 at multiple airports throughout the country at any given  
10 point in time. We focus on the places that we originate  
11 traffic into and out of.

12 THE COURT: To your knowledge is any other airline  
13 -- of course you don't fly too many planes, but does any  
14 other airline operate that same way, returning all the  
15 planes to base at night?

16 THE WITNESS: To my knowledge Allegiant does and I  
17 think Sun Country has some tendency to do that as well.

18 THE COURT: Thank you.

19 Go ahead, Mr. Loevinsohn.

20 Q. Mr. Yealy, which airports, if any, come to mind  
21 when you think of airports that do not have sufficient  
22 available resources for Avelo to initiate or expand  
23 service?

24 A. The slot-controlled airports are ones that would  
25 be difficult for us to get into just by their very

1 nature of being regulated with slots. And then there  
2 are larger airports throughout the country that have  
3 become quite full over the last 10 and 20 years, they  
4 can be very difficult to get access into and out of.

5 Fort Lauderdale, for example, we are in -- but it  
6 can be difficult to grow into it just because the  
7 airport is pretty well-utilized, um, and we share gates  
8 with other airlines. Therefore it can be difficult for  
9 us to get a foothold and to grow in the way that we  
10 might otherwise grow.

11 Q. And when you say it's difficult for you to grow at  
12 Fort Lauderdale, do you mind explaining that a little  
13 bit further?

14 A. Every time we intend to add flights or change our  
15 schedule, it's got to be approved by the airport, and of  
16 course they're taking into consideration the other  
17 airlines that are operating there. And so we may  
18 oftentimes get schedules that don't work with how we  
19 would intend to operate our flights, and therefore can't  
20 get into the airport.

21 Q. Okay. And putting aside for a second the airport  
22 resources that are needed to expand or initiate service,  
23 what other resources, if any, does Avelo need to  
24 initiate or expand service at an airport?

25 A. Availability of aircraft crews, things that we

1 would need just to operate the airline. And then at  
2 times capital depending on the airport and the level of  
3 investment that needs to be made at the airport.

4 Q. Okay. And you mentioned a "slot-controlled  
5 airport" a few seconds ago. What are -- are you  
6 familiar with the term "takeoff and landing slots"?

7 A. I am.

8 Q. And what are "takeoff and landing slots"?

9 A. The right to have or perform one takeoff and one  
10 landing at a given airport.

11 Q. Okay. And which airports require a carrier to  
12 have takeoff and landing slots to operate service at  
13 that airport?

14 A. La Guardia Airport in New York City. John F.  
15 Kennedy Airport in New York City. Washington Reagan  
16 Airport in D.C. I believe that's it. Well there may be  
17 a few others.

18 Q. Okay. And can you please describe Avelo's ability  
19 to obtain slots at these airports?

20 A. Um, we have not attempted to obtain slots at these  
21 airports. But it would be very challenging. We'd have  
22 to go, to my knowledge, to try and acquire them from  
23 another airline.

24 Q. Okay. Do you know if takeoff and landing slots  
25 are easy to operate into or out of Newark Liberty

1 International Airport?

2 A. This one has, um, to my knowledge changed over the  
3 years. In the past takeoff and landing spots were  
4 required, but I do know those were waived for a period  
5 of time. I do not know at the moment whether takeoff  
6 and landing slots are required at Newark Liberty.

7 Q. Do you know if any authorizations are needed to  
8 operate into or out of Newark Liberty?

9 A. I believe there are but I'd have to, um -- we'd  
10 have to reach out and have discussions with the airport  
11 directly.

12 Q. Okay. Mr. Yealy, a few seconds ago you mentioned  
13 that it can be challenging to, um -- resources are  
14 challenging at larger airports. I don't want to  
15 misstate your testimony. But does that sound familiar?

16 A. Yes.

17 Q. And what do you mean by that?

18 A. It can be difficult to get access to the gate and  
19 terminal space that I mentioned previously at certain  
20 larger airports.

21 Q. And which airports come to mind when you say that?

22 A. I mentioned Aurora Fort Lauderdale, that can be  
23 tricky to get appropriate access to grow service. There  
24 are other airports that exhibit the same  
25 characteristics. Fort Meyers we had challenges in



1 getting access to grow in the manner that we wanted to  
2 grow. And even our first base, Hollywood Burbank  
3 Airport, is very full, it's a 14-gate facility that we  
4 had the good fortune of obtaining access to in the  
5 pandemic. But beyond that it's difficult to grow into  
6 just given the space constraints at the field.

7 Q. Okay. Are you familiar with the term "fortress  
8 hubs"?

9 A. Yes.

10 Q. What is a "fortress hub"?

11 A. Generally speaking it's the large hubs that the  
12 legacy airlines have, like Atlanta, Charlotte, Chicago  
13 O'Hare, Dallas Fort Worth, etc.

14 Q. To what extent, if at all, does Avelo currently  
15 operate service into or out of fortress hubs?

16 A. We don't operate into or out of any fortress hubs,  
17 as they would probably be classically defined today, but  
18 we do have service to Chicago's Midway Airport, which is  
19 a large hub for Southwest Airlines.

20 Q. And can you please describe Avelo's ability to  
21 initiate service at the fortress hubs other than what  
22 you've made reference to today?

23 A. We have not made a particular attempt to enter any  
24 of the fortress hubs at this point in time, so I cannot  
25 really speak one way or another about our ability to get

1 into the airports.

2 Q. Okay. Switching topics a little bit, Mr. Yealy,  
3 if we could discuss Avelo's bases.

4 To what extent, if at all, does Avelo operate  
5 bases?

6 A. We operate at 6 bases across the country.

7 Q. And where are those bases?

8 A. Um, the Hollywood Burbank Airport in Los Angeles.  
9 Las Vegas Airport. Orlando International Airport. New  
10 Haven Airport in Connecticut. And Wilmington Airport in  
11 the Delaware Valley Philadelphia region. And then  
12 Raleigh-Durham International Airport.

13 THE COURT: What you call "New Haven," that's T.F.  
14 Green, isn't it?

15 THE WITNESS: That is -- T.F. Green is just up the  
16 road. Tweed, New Haven. It's Tweed.

17 THE COURT: Tweed New Haven?

18 THE WITNESS: Tweed Airport, T-W-E-E-D.

19 THE COURT: Thank you.

20 THE WITNESS: Yup.

21 Q. When Avelo refers to a city as a "base," what does  
22 that mean?

23 A. That's where we predominantly park our aircraft,  
24 that's where we have them live every day. When I refer  
25 to aircraft going out and back and staying at bases

1 overnight, that's where we keep them. That where we  
2 employ most of our crew members, like pilots, flight  
3 attendants, airport operations, crew members,  
4 maintenance technicians, etc.

5 Q. And are those crew members and other employees you  
6 mentioned specifically hired for bases?

7 A. Correct, yes.

8 Q. If you know, what percentage of Avelo's routes  
9 touch a base at at least one end?

10 A. At least 90 percent. Almost all of our routes  
11 touch a base on one end.

12 Q. Okay. Mr. Yealy, we're going to refer to the  
13 binder right now. If you'd turn to the tab marked  
14 Exhibit 12 in your binder.

15 MR. LOEVINSOHN: Your Honor, Exhibit 12 has  
16 already been admitted into evidence. It does however  
17 contain certain information that Avelo has requested to  
18 keep confidential, and we'll ask momentarily to publish  
19 it. And the copy of the exhibit that we'd like  
20 published to the gallery will contain redactions.

21 THE COURT: Understood.

22 MR. LOEVINSOHN: May we publish Exhibit 12,  
23 please?

24 THE COURT: You may.

25 (On screen.)

1 Q. Mr. Yealy, are you familiar with this document?

2 A. I am, yes.

3 Q. And what is it?

4 A. Some board materials from our April 2023 board  
5 meeting.

6 Q. Were you involved in preparing this document?

7 A. I was.

8 Q. If we could turn in Exhibit 12 to the page  
9 Bates-ending 035.

10 A. (Turns.)

11 Q. The title of the slide says "Driving to  
12 Profitability: Minimal Competition." Can you please  
13 describe what is being depicted in the bar chart at the  
14 bottom of the slide?

15 A. The bar chart at the bottom of the slide depicts  
16 the percentage of available seat miles, ASMs, that we  
17 had in our network at that point in time, or at least we  
18 were projecting to have at that point in time, in April  
19 of 2023, that had direct nonstop competition between  
20 airport pairs. The purple bar represents our entire  
21 network. And the light blue bar represents our network,  
22 excluding our Raleigh-Durham base.

23 Q. Okay, and why is Raleigh-Durham excluded?

24 A. We excluded Raleigh-Durham because -- we started  
25 that base in February of 2023 and we started with three

1 routes that had direct nonstop competition, which was a  
2 first for us. We were testing to see our ability to  
3 compete in markets with direct nonstop competition, and  
4 we wanted to also test the amount of awareness that we  
5 could build quickly in Raleigh. So this gives a view  
6 for the board of what it looks like, what our system  
7 looks like without considering Raleigh, and that  
8 experiment that we're running, and also what the system  
9 looks like if you include that.

10 Q. Okay, and do you still serve those three  
11 competitive routes in Raleigh?

12 A. We do not.

13 Q. So if we could specifically look at the last month  
14 in the chart for December 2023. Can you tell us what  
15 it's showing there?

16 A. It's showing that in December of 2023, as of this  
17 April board meeting, we expected to have 7 percent of  
18 the available seat miles, the ASMs, that we were  
19 scheduling to have direct nonstop competition, and 4  
20 percent if you -- throughout the three Raleigh markets,  
21 or all of the Raleigh markets that we fly, or intended  
22 to fly at that point in time.

23 Q. And to what extent, if at all, does this bar chart  
24 tell us how many of Avelo's ASMs do not have competition  
25 on them?

1 A. The percentage of ASMs that do not have  
2 competition on them would simply be 100 percent minus  
3 the percentage you see in the bar chart. So the purple  
4 bar showing 7 percent, 100 miles, that would show that  
5 93 percent of our available seat miles do not have  
6 nonstop competition.

7 Q. Okay.

8 THE COURT: I'm not sure I'm following. 7 percent  
9 do not have competition?

10 THE WITNESS: 7 percent have direct nonstop  
11 competition.

12 THE COURT: And -- right.

13 THE WITNESS: Correct.

14 THE COURT: I see. I see. And that's why the  
15 title here is -- this is taking a look at Avelo's share  
16 with minimal competition?

17 THE WITNESS: Correct.

18 THE COURT: I follow.

19 Q. We've been discussing ASMs here. ASM is just a  
20 measure of airplane capacity, right?

21 A. It is one measure of airplane capacity, yes.

22 Q. Okay. Now looking at the slide here, I'll refer  
23 to the title of the slide again, "Driving to  
24 Profitability: Minimal Competition."

25 Can you please describe the relationship, if any,

1 between minimal competition and profitability?

2 A. So for us "Driving to Profitability with Minimal  
3 Competition" is twofold. Number 1, we're trying to  
4 offer a differentiated product versus just the same  
5 routes that other airlines are flying, so we seek to  
6 find routes, at least airport fares that other carriers  
7 are not serving so we can differentiate our product in a  
8 way that's not just lowest priced or lowest fare.  
9 Additionally as a startup airline, in a competitive  
10 industry, the best way for us to grow our business, grow  
11 our brand, and grow our awareness, is to find routes  
12 that other carriers are not today flying.

13 Q. And why is Avelo interested in flying routes that  
14 other carriers are not flying?

15 A. To grow that business, grow that brand, that  
16 awareness, and to allow us to carve out our unique  
17 niche.

18 Q. Does the presence of other airlines affect the  
19 price Avelo can charge for fares on those routes?

20 A. It can, yes. Not always, but it can.

21 Q. And how can it?

22 A. Depending on what other airlines are pricing, we  
23 may have to respond or react accordingly in order to  
24 fill the aircraft that we need to fly profitably back  
25 and forth.

1 Q. Okay. And so if other airlines are not serving  
2 those routes, how does that affect what Avelo can charge  
3 for those fares?

4 A. If other airlines are not serving those routes, it  
5 does not mean that we can just charge anything, um, at  
6 times we have to look at what's going on in a metro area  
7 as well to see if an airport up the road might be more  
8 competitive fares. And then of course the market will  
9 only bear what the market will bear. And so our ability  
10 to price, it's helped by not having direct nonstop  
11 competition, but that doesn't always directly mean we  
12 can charge the price that we would otherwise want to  
13 charge.

14 Q. Okay. And just to make sure this was clear. When  
15 we look at the bar chart again for December, is this  
16 saying that 93 percent of Avelo's capacity has no  
17 nonstop competition on their route?

18 A. That's what this is saying, yes. At least as of  
19 this snapshot in April of 2023.

20 Q. Okay. And if we could turn backwards in this  
21 slide -- in this dec., sorry, to the page ending --  
22 Bates ending 027, we would see Exhibit 12.

23 A. (Turns.)

24 Q. And I'd like to direct your attention to the first  
25 subbullet under "Continuing on the path we laid out for



1 2023," do you see that?

2 A. Yes.

3 Q. It says like "Stage lengths short, under 850  
4 miles." Do you see that?

5 A. Yes.

6 Q. What does that sentence mean?

7 A. At this point in time, for the plan that we had  
8 for the remainder of 2023, we intended to keep the  
9 average flight distance, the distance between two  
10 airport pairs on a flight that we operated, at less than  
11 850 miles. On average at least.

12 Q. Okay. And why was Avelo interested in keeping  
13 average stage lengths under 850 miles?

14 A. For two reasons predominantly. Number 1, it helps  
15 keep operational simplicity. Our flying is all out-and-  
16 back flying that we accomplish with a single crew, so a  
17 pair of pilots and a crew of flight attendants. So  
18 going further introduces complexities where you may have  
19 to have crews sleep overnight at a hotel and get off the  
20 aircraft. So this keeps our business simple and our  
21 operation simple.

22 And then in a highly volatile and rising fuel  
23 environment, the further you fly, the larger the  
24 percentage of your overall operating expenses is fuel.  
25 And so keeping our stage length short helps minimize our

1 exposure to the volatility in the fuel market,  
2 especially in a rising environment like we've seen over  
3 the last two years.

4 Q. Okay. And does Avelo continue to desire to keep  
5 stage lengths short?

6 A. We do, yes.

7 Q. Okay. Could you give us an example of a route  
8 that is 850 miles?

9 A. Um, New York to Florida is, generally speaking,  
10 850 to 1,000 miles, New York to Carolina. So New Haven,  
11 Connecticut, say it's to Myrtle Beach or Charleston,  
12 South Carolina, or Savannah Georgia, would be in the  
13 neighborhood of 850 miles.

14 Q. Okay. Does Avelo offer any transcontinental  
15 service?

16 A. We do not, no.

17 Q. Does Avelo have any plans to offer  
18 transcontinental service?

19 A. Not at this time, but it's something you always  
20 look at.

21 Q. Does Avelo currently offer international service?

22 A. Not with Scheduled Service Fly, we do not.

23 Q. Now three bullets down it says "Leverage spoke  
24 airport investments are connected to multiple bases."  
25 Do you see that?

1 A. I do, yes.

2 Q. What does that sentence refer to?

3 A. When we add spoke airports in our network, the  
4 goal is always to fly from that spoke to more than one  
5 base in our network?

6 Q. Okay. And why is that?

7 A. When you add new cities it can be difficult to  
8 build awareness in the market, "Who is Avelo?" "What's  
9 the product that we offer?" "What's the customer value  
10 proposition?" So by having more destinations offered  
11 from a spoke, it makes our service more attractive to  
12 more customers, and helps us gain awareness faster, and  
13 helps us be more efficient in how we operate at the  
14 airport in that multiple flights can help improve the  
15 efficiency of the airport operations crew members that  
16 might be employed at the airport, and for our pilots and  
17 flight attendants.

18 Q. In the last year, has Avelo launched any service  
19 on any route in which it does not serve -- it does not  
20 already serve at least one endpoint?

21 A. Um --

22 THE COURT: I don't understand the question. I'm  
23 sorry.

24 MR. LOEVINSOHN: I stumbled over it. Let me try  
25 it again.

1 Q. In the last year, has Avelo launched service on  
2 any route in which it does not already serve at least  
3 one of the airports that are an endpoint to that route?

4 A. So over the last year we've added predominantly  
5 airports that already existed in our network. There  
6 haven't been -- there have been new airports added that  
7 we didn't have a presence in prior, but there's been no  
8 new two-airport routes that we've added in the last  
9 year, at least that I can recall.

10 Q. Okay. When was the last time that Avelo launched  
11 service on a route in which it did not previously serve  
12 at least one of the airports on that route?

13 A. Most likely -- I'd have to go back and double-  
14 check, but most likely the opening of our New Haven base  
15 in November of 2021.

16 Q. And does Avelo have any plans to launch service on  
17 any route in which it does not already serve at least  
18 one of the endpoints?

19 A. At this point we do not, at least looking out into  
20 the near future, although we're always up -- you know  
21 keeping our eyes on available market opportunity. So it  
22 could very well happen again in the near future.

23 Q. Okay. If we could turn to the page ending, Bates  
24 ending 032, the title of the slide says, "Driving to  
25 Profitability: Utilization."

1 A. (Turns.)

2 Q. If you look at the two bullets on the slide. Are  
3 these two bullets accurate?

4 A. Yes.

5 Q. Okay. Can you please explain -- so that the  
6 second bullet says "As a result, it makes more sense not  
7 to operate flights that would likely not cover their  
8 variable costs." Do you see that?

9 A. I do, yes.

10 Q. Can you please explain it makes sense not to  
11 operate flights that would likely not cover their  
12 variable costs?

13 A. Um, well by definition, if they're not covering  
14 their variable costs, then they would be burning cash by  
15 literally operating the flight, getting from Point A to  
16 Point B.

17 Q. Okay. And, um, how do you measure utilization,  
18 Mr. Yealy?

19 A. We measure it, as you see here on the slide, as  
20 "scheduled block hours per aircraft per day."

21 THE COURT: As I recall the testimony in this  
22 case, I understand that Spirit tries to keep its costs  
23 down by investing in planes and then using them very  
24 frequently.

25 When looking at this, you keep your costs down by

1 investing in used aircraft, which I assume are cheaper,  
2 and that's what saves you -- saves your costs?

3 THE WITNESS: That's correct. That's in part at  
4 least what helps reduce our overall costs.

5 Q. And do you have an understanding as to how Avelo's  
6 utilization compares to the utilization of other ultra-  
7 low-cost carriers?

8 A. I do, yes.

9 Q. And how does Avelo's utilization compare to that  
10 of other ultra-low-cost carriers?

11 A. Generally speaking, our utilization is more  
12 comparable to an Allegiant or a Sun Country, whereas  
13 Spirit and Frontier operate at higher levels of  
14 utilization.

15 Q. Okay. And to what extent, if any, is there a  
16 relationship between an airline's utilization and the  
17 amount of capacity offered by that airline?

18 A. It's difficult to say. I'd say that generally  
19 speaking airlines with lower utilization offer less  
20 capacity, although I don't think that that's necessarily  
21 a universal truth. But I think that's probably safe to  
22 say.

23 MR. LOEVINSOHN: Your Honor, may I have a moment?

24 THE COURT: You may.

25 (Pause.)

1 MR. LOEVINSOHN: I pass the witness, your Honor.

2 THE COURT: Ms. Wright?

3 MS. WRIGHT: Thank you, your Honor.

4

5 CROSS-EXAMINATION BY MS. WRIGHT:

6 Q. If you could, let's bring back up TX 12, please,  
7 and let's go back to Bates number ending in 35.

8 A. (Turns.) Mr. Yealy, the first bullet point on  
9 this slide is that only a small percentage of Avelo's  
10 capacity is in markets with airport-to-airport  
11 competition, is that correct?

12 A. That's correct, yes.

13 Q. And what does that mean, "airport-to-airport"?

14 A. That means, um, as it says, literally airport to  
15 airport. So, for example, no nonstop competition from  
16 say New Haven to Fort Lauderdale, and only those two  
17 airport pairs.

18 Q. So you mentioned earlier metro areas. So even if  
19 a route is unique between two airports, there may be  
20 other airlines that fly from nearby airports in the  
21 metro area, is that correct?

22 A. That's correct, yes.

23 Q. And I'll pass up to you, Mr. Yealy, what's been  
24 marked as Demonstrative Number 1.

25 (Pause.)

1 THE COURT: The Court Reporter didn't hear it.

2 A. Ask your question again.

3 Q. Mr. Yealy, does Avelo publish its route map on its  
4 website?

5 A. Yes, we do.

6 Q. And in front of you is Demonstrative Number 1. Is  
7 that a reflection of Avelo's route map as published on  
8 its website?

9 A. Um, it looks like it is. Yes.

10 Q. Does Avelo fly from Wilmington Delaware?

11 A. We do, yes.

12 Q. And Avelo considers its route from Wilmington  
13 Delaware to San Juan to be unique, is that correct?

14 A. We do, yes.

15 Q. But other airlines fly from Philadelphia to San  
16 Juan, don't they?

17 A. That's correct, yes.

18 Q. And Philadelphia and Wilmington Delaware are in  
19 the same metro area?

20 A. That's correct, yes.

21 Q. They're relatively close to each other?

22 A. Yes.

23 Q. Does Avelo consider its route from New Haven to  
24 Orlando to be unique?

25 A. We do, yes.



1 Q. Do other airlines fly from Hartford to Orlando?

2 A. There are other airlines that fly from Hartford to  
3 Orlando, yes.

4 Q. And New Haven and Hartford are in the same metro  
5 area?

6 A. They are very close. I don't know if they're in  
7 the same metro area per se, but they are close.

8 THE COURT: And I'm trying to extend my  
9 understanding.

10 Hartford is Bradley International, is that right?

11 THE WITNESS: That's correct, yes.

12 THE COURT: I shouldn't have asked you.

13 (Laughter.)

14 THE WITNESS: Yes, spot on.

15 THE COURT: Thank you for your testimony. All  
16 right.

17 Go ahead, Ms. Wright. Forgive me.

18 Q. Mr. Yealy, does JetBlue fly from Hartford to  
19 Orlando?

20 A. They do, yes.

21 Q. Does Avelo fly from New Haven to other cities in  
22 Florida?

23 A. We do, yes.

24 Q. Which other cities?

25 A. Many of the large Florida cities, including

1 Orlando, which we've already discussed. Daytona Beach.  
2 Melbourne Florida. West Palm Beach. Fort Lauderdale.  
3 And then on the West Coast, we fly to Tampa, Sarasota,  
4 and Fort Meyers.

5 Q. And does JetBlue fly from Hartford to Tampa?

6 A. I believe so, yes.

7 Q. Does JetBlue fly from Hartford to Fort Meyers?

8 A. I believe so, yes.

9 Q. And does JetBlue fly from Hartford to South  
10 Florida?

11 A. Yes, I believe so.

12 Q. So notwithstanding Avelo's current focus on unique  
13 airport-to-airport routes, is it fair to say that Avelo  
14 will consider a new route even if another airline is  
15 serving it?

16 A. Yes, that's fair.

17 Q. And today it says "being in commercial service  
18 since April 2021." Has Avelo encountered other airlines  
19 on its route?

20 A. We have, over the last couple years. Yes.

21 Q. Which other airlines?

22 A. We've encountered Alaska Airlines and Southwest  
23 Airlines on the West Coast with some of our Burbank  
24 routes. And then as I mentioned earlier, the Raleigh-  
25 Durham routes, the three that we launched initially, had

1 nonstop competition to Orlando, Fort Lauderdale, and  
2 Tampa, we encountered JetBlue and Spirit, Frontier,  
3 Southwest, and others.

4 Q. On the map in front of you, Mr. Yealy, what are  
5 the yellow highlighted cities?

6 A. These appear to be our base cities around the  
7 country.

8 Q. And you testified earlier that there are six of  
9 them currently?

10 A. That's correct, yes.

11 Q. So in the 2 1/2 years that Avelo's been operating,  
12 it's been able to establish bases on the West Coast, the  
13 East Coast, and in Florida?

14 A. Yes.

15 Q. Mr. Yealy, does Avelo fly from New Haven to San  
16 Juan?

17 A. We don't fly yet, although we will start service  
18 in 12 days here, so. Yes.

19 Q. And why did Avelo decide to fly from New Haven to  
20 San Juan?

21 A. There's a large Puerto Rican community in the  
22 Connecticut region, especially in New Haven, and so we  
23 felt that that was a great opportunity to serve that  
24 community to where they want to go.

25 Q. And does Avelo fly to San Juan from any other

1 cities?

2 A. Um, concurrent with starting service to New Haven,  
3 Connecticut, we will also start service to Wilmington,  
4 Delaware.

5 Q. And that service will start this month?

6 A. Correct, yes.

7 Q. Are there nonstop flights that other airlines  
8 offer from Philadelphia Airport to San Juan?

9 A. There are, yes.

10 Q. Do you know which other airlines offer that  
11 service from Philadelphia to San Juan?

12 A. American, Frontier, and Spirit, to my knowledge.

13 Q. And did you look at the demand for flights to San  
14 Juan from the greater Philadelphia region when you  
15 decided to begin service from Wilmington to San Juan?

16 A. That was one part of the consideration set that we  
17 looked at, yes.

18 Q. And why did you consider that was part of the  
19 consideration set?

20 A. Just to see what the existing traffic looked like  
21 that the carriers, the incumbent carriers were able to  
22 achieve.

23 Q. And Avelo believed it could fly a possible route  
24 from Wilmington to San Juan?

25 A. Correct, yes.

1 Q. Will Avelo consider flying to San Juan from any  
2 other city?

3 A. Perhaps, we're always looking at opportunities to  
4 add new routes in our network, so it's not -- it's  
5 possible certainly.

6 Q. And as a general matter, is it easier to start a  
7 new route if Avelo is already serving one end of it?

8 A. That can help make it easier, yes.

9 Q. And why is that?

10 A. Generally speaking we've already gone through the  
11 work to establish access at that destination report.  
12 San Juan, for example, we at least know that we'd have  
13 access to a gate, we'd have access to a facility. So  
14 does that guarantee that we could add another route?  
15 No. But it certainly makes it easier because we're not  
16 starting our conversation from scratch.

17 Q. And how many routes does Avelo currently fly?

18 A. Um, just under 70. 68 routes.

19 Q. And how quickly can Avelo enter a new route?

20 A. That's a difficult question. It's entirely  
21 dependent on the airline pairs we intend to serve. If  
22 they're larger airports, we can turn on a route fairly  
23 quickly, it could be a matter of a few months. If it's  
24 an airport that has not historically had commercial  
25 service or require some level of infrastructure

1 investment, it may be a number of months up to perhaps a  
2 year even. So it depends entirely on the airport pair  
3 in question.

4 Q. Counsel for the government asked whether Avelo  
5 currently flies commercial service internationally? And  
6 I believe you said No, is that correct?

7 A. That's correct.

8 Q. Does Avelo fly charter service internationally?

9 A. We have had charter service internationally in the  
10 past, and then we will start a dedicated charter program  
11 from Lansing, Michigan to Cancun, Punta Cana, and  
12 Montego Bay, um, this January.

13 Q. And for the benefit of everyone, can you explain  
14 the difference between charter service and commercial  
15 service?

16 A. Broadly speaking, in commercial service we put  
17 tickets and seats out to the public ourselves, we're  
18 taking the risk of selling the seats as Avelo. Whereas  
19 a charter, a third-party will approach us and basically  
20 pay for the entire aircraft, and the risk of selling the  
21 seats to customers is on them. Whether it's a sports  
22 team, a large VIP group, or perhaps a hotel group,  
23 they're the ones taking the risk of selling the tickets.  
24 They instead just pay us to operate the aircraft.

25 Q. So Avelo currently has all of the regulatory

1       approvals and designations it needs to fly charter  
2       service internationally, correct?

3       A.       That's correct.

4       Q.       Does Avelo have all of the regulatory approvals  
5       and designations it needs to fly commercially  
6       internationally?

7       A.       That's correct, yes.

8       Q.       Has Avelo considered offering international  
9       commercial service?

10      A.       We have.

11      Q.       And looking at the map, some of the airports where  
12      Avelo currently flies are international airports, is  
13      that correct?

14      A.       That's correct, yes.

15      Q.       And that's on the East Coast and in Florida, in  
16      particular?

17      A.       Yes.

18      Q.       So those international airports could support  
19      flights, for instance, to Mexico or the Caribbean?

20      A.       They could, sure.

21      Q.       Switching gears a little bit on the map to focus  
22      on the Midwest. Does Avelo fly from Dubuque, Iowa?

23      A.       We do, yes.

24      Q.       And when did Avelo enter Dubuque Airport?

25      A.       We intended to enter Dubuque Airport in January of

1 2023. But due to some complications with the airport,  
2 we didn't actually start serving Dubuque Airport itself  
3 until March of 2023.

4 Q. And where did Avelo fly to from Dubuque?

5 A. Both Orlando and Las Vegas.

6 Q. Before Avelo entered Dubuque Airport, was any  
7 other airline offering commercial service there?

8 A. Historically there has been some level of  
9 commercial service at Dubuque.

10 Q. And do you know when that other commercial service  
11 ended?

12 A. I believe American Airlines left in 20 -- either  
13 2019 or 2022. I can't recall the specifics. But there  
14 was an airline that departed the airplane entirely.

15 Q. And between the time American Airlines departed  
16 and Avelo started service at Dubuque, was there any  
17 other airline offering commercial service there?

18 A. Not to my knowledge, no.

19 Q. So if a consumer near Dubuque Iowa wanted to fly  
20 to Orlando, Florida during that time period, what other  
21 airport options do they have?

22 A. They would have had to drive to Cedar Rapids, um,  
23 50 or 60 miles down the road, um, perhaps Madison,  
24 Wisconsin, or drive a little further to the Chicago area  
25 airports for service.



1 Q. And is Avelo currently the only airline offering  
2 commercial service at Dubuque?

3 A. Yes.

4 Q. Mr. Yealy, did you testify earlier that you  
5 currently have 16 airplanes in service?

6 A. Yes.

7 Q. How many aircraft did you have when you started  
8 commercial service in April of 2021?

9 A. We had three aircraft at the time.

10 Q. And did you acquire additional aircraft later in  
11 2021?

12 A. We did, yes.

13 Q. How many aircraft did you acquire?

14 A. Three additional airplanes. We finished with six.

15 Q. Does Avelo plan to acquire additional aircraft  
16 next year?

17 A. We do, yes.

18 Q. Approximately how many does Avelo plan to acquire  
19 next year?

20 A. At this point in time we plan to acquire five more  
21 aircraft next year.

22 Q. So if you currently have 16 in service and you're  
23 acquiring five more, that's approximately a 30 percent  
24 increase?

25 A. Correct, yes.

1 Q. And at a high level does -- I know there are  
2 confidentiality concerns. But at a high level does  
3 Avelo intend to continue growing its fleet beyond next  
4 year into the future?

5 A. Yes, we do.

6 Q. Mr. Yealy, do you know how many planes Spirit had  
7 when it started commercial service?

8 A. Not off the top of my head, I do not, no.

9 Q. In your best estimation does Spirit have more  
10 planes today than it did when it started service?

11 A. Yes, most certainly.

12 Q. Mr. Yealy, you said earlier that Avelo primarily  
13 acquired used aircraft, correct?

14 A. That's correct, yes.

15 Q. So Avelo generally does not purchase new aircraft  
16 directly from a manufacturer?

17 A. That's correct, yes.

18 Q. Okay. So to the extent manufacturers are  
19 experiencing delays in producing new aircraft, that  
20 would not directly affect Avelo, is that fair?

21 A. It doesn't directly affect us, although there are  
22 secondary impacts that we feel by lack of manufacturer  
23 production. Many of the aircraft that we take from used  
24 airlines, they require the introduction of a new  
25 aircraft in order to return the aircraft that we would

1 eventually take. So any delay ends up cascading back  
2 down to us if the company returning the prior aircraft  
3 is not getting their new aircraft on time.

4 Q. Mr. Yealy, you mentioned the acquisition of Xtra  
5 Airlines, which was a charter airline, is that correct?

6 A. That's correct, yes.

7 Q. Why did Avelo transition from just charter service  
8 to commercial service?

9 A. I would categorize it a little differently. Our  
10 founder, Andrew Levy acquired Xtra Airways in August of  
11 2018 with the intent of restructuring it or turning it  
12 into a scheduled service airline. So the intent under  
13 the new ownership group was never to really operate the  
14 charter airline, the intent was to turn it into a  
15 scheduled service airline as soon as possible.

16 Q. And who is Mr. Levy?

17 A. He is our founder, Chairman, CEO.

18 Q. And does he have experience with any other  
19 airline?

20 A. He does. He was a co-founder of Allegiant Air in  
21 the early 2000s, and then he was, um, prior to Avelo,  
22 the CFO of United Airlines.

23 Q. Are any other Avelo executives, do any of them  
24 have -- let me start that over.

25 Are there any other Avelo executives who have

1 experience working at other airlines?

2 A. Yes.

3 Q. Which other airlines?

4 A. We have executives from Allegiant, United, Delta,  
5 JetBlue, and others.

6 Q. And do you have confidence in Avelo's leadership  
7 to grow a successful ULCC?

8 A. Yes, absolutely.

9 Q. In your estimation will Avelo continue to grow in  
10 the next few years?

11 A. Yes.

12 Q. And why are you so confident in that?

13 A. We have a business plan that we are confident in  
14 operating. There's been tremendous customer response to  
15 the product and the convenience and reliability that we  
16 offer. So I'm confident that we can continue to find  
17 opportunities to grow and expand our presence across the  
18 country.

19 MS. WRIGHT: Thank you, Mr. Yealy.

20 THE COURT: Any redirect, Mr. Loevinsohn?

21 MR. LOEVINSOHN: Just a few brief questions, your  
22 Honor.

23 THE COURT: You may.

24

25 REDIRECT EXAMINATION BY MR. LOEVINSOHN:

1 Q. Mr. Yealy, do you recall your discussion with  
2 JetBlue's counsel about Avelo's interest in operating  
3 international service?

4 A. Um, I don't recall a specific conversation about  
5 offering international service with JetBlue's counsel,  
6 although we may have discussed it.

7 Q. Okay. And do you recall our strategy -- our  
8 discussion earlier about Avelo's strategy of flying to  
9 routes without competition?

10 A. Yes.

11 Q. To what extent, if at all, if Avelo were  
12 interested in the exploring of national service, would  
13 it apply that strategy to those international routes?

14 A. We would view it the same way as we view our  
15 scheduled service today, we'd evaluate opportunities  
16 each on a case-by-case basis with a lean towards  
17 operating routes that do not have nonstop competition.  
18 Though that certainly won't be the only criteria for  
19 selecting a route. But it would be a heavy  
20 consideration though.

21 MR. LOEVINSOHN: May I have a moment, your Honor?

22 THE COURT: Yes.

23 (Pause.)

24 MR. LOEVINSOHN: No further questions, your Honor.

25 THE COURT: Nothing further, Ms. Wright?

1 MS. WRIGHT: No.

2 THE COURT: You may step down. Thank you.

3 Call your next witness.

4 MR. DUFFY: Your Honor, Sarah Riblet will be  
5 taking our next witness, who is Mr. Matt Klein of  
6 Spirit.

7 THE COURT: Mr. Klein may come forward.

8 (MATTHEW KLEIN, sworn.)

9

10 \*\*\*\*\*

11 MATTHEW KLEIN

12 \*\*\*\*\*

13

14 DIRECT EXAMINATION BY MS. RIBLET:

15 Q. Good morning, your Honor, Sarah Riblet for the  
16 United States. And good morning, Mr. Klein.

17 A. Good morning.

18 Q. We've provided you with a binder there that  
19 contains some documents we've made reference to during  
20 your examination, but for now I'd just like you to put  
21 that aside and just answer some introductory questions.

22 You are currently employed by Spirit Airlines,  
23 right?

24 THE COURT: Let's start the way I normally start.  
25 Would you state your full name.

1 THE WITNESS: Yes, sir. Matthew Klein.

2 THE COURT: Go ahead.

3 MS. RIBLET: Thank you, your Honor.

4 Q. You are currently employed by Spirit Airlines,  
5 right, Mr. Klein?

6 A. Yes, that's correct.

7 Q. And in total you spent about 28 years working in  
8 the airline industry, is that right?

9 A. I have.

10 Q. For how many airlines have you worked?

11 A. I have worked for -- this is my third airline.

12 Q. U.S. Air, Air Tran, and now Spirit, right?

13 A. Correct.

14 Q. Today you're Spirit's Executive Vice-President and  
15 Chief Commercial Officer?

16 A. Yes.

17 Q. And you have been Spirit's Chief Commercial  
18 Officer since joining the airline in 2016, right?

19 A. That is correct.

20 Q. What are your responsibilities as Spirit's Chief  
21 Commercial Officer?

22 A. So at a broad level I'm responsible for the  
23 revenue side of the business, network planning, revenue  
24 management, brand, guest experience, um, sales,  
25 e-commerce. Anything that kind of rolls off that

1 involves the guest or revenue generation.

2 Q. And in your present role at Spirit, you report  
3 directly to Spirit's CEO, Ted Christie, right?

4 A. I do.

5 Q. You also regularly make presentations to Spirit's  
6 board of directors?

7 A. Yes, I do.

8 Q. And you regularly speak on behalf of Spirit on  
9 earnings calls, right?

10 A. I do.

11 Q. Today we're here to discuss whether the proposed  
12 merger would harm competition. I'd like to briefly  
13 discuss how Spirit competes with other airlines,  
14 particularly JetBlue.

15 Spirit operates today as a ULCC, correct?

16 A. We do.

17 Q. And JetBlue is not an ultra-low-cost carrier, is  
18 it?

19 A. Um, no.

20 Q. JetBlue is more set up to carry corporate  
21 travelers or high-end travelers, is that right?

22 A. I wouldn't necessarily say that.

23 Q. You've heard JetBlue identified as a "hybrid  
24 carrier," correct?

25 A. Um, I've heard that term before, yes. It's not



1 one that I use, but, yes.

2 Q. You have described "hybrid carriers" as set up to  
3 carry corporate travelers or high-end travelers more  
4 than Spirit, right?

5 A. I generally call them "low-cost carriers," not  
6 "hybrid carriers." But could you repeat your question  
7 again?

8 Q. You've described "hybrid carriers" as set up to  
9 carry corporate travelers or high-end travelers more  
10 than Spirit, correct?

11 A. In terms of more than Spirit? I would say that's  
12 probably correct.

13 Q. And there are fewer seats per equivalent plane on  
14 JetBlue's aircraft than on Spirit's aircraft, right?

15 A. There are fewer seats on JetBlue's aircraft,  
16 equivalent aircraft, that's right.

17 Q. Today on average JetBlue's fares are higher than  
18 Spirit's, correct?

19 A. They are.

20 Can I correct one of my answers from before? I'm  
21 not sure that I've ever personally said that JetBlue is  
22 set up to carry more corporate customers than Spirit. I  
23 just want to make sure I say that correctly.

24 THE COURT: And it's appropriate always, you can  
25 go back and correct anything, if on reflection you think

1 it's inaccurate.

2 THE WITNESS: Oh, thank you. Okay. Thank you.

3 Q. Let's look at a document you submitted on behalf  
4 of Spirit to the United States government. I'd like you  
5 to pull out that binder now and either turn to Exhibit  
6 340 or reference your screen. We'll pull it up there as  
7 well.

8 A. (On screen.)

9 Q. And we've tabbed some of the pages in the binder  
10 for longer documents just to help you find the relevant  
11 pages.

12 A. Okay.

13 Q. So, Mr. Klein, this is Spirit's complaint to the  
14 U.S. Department of Transportation regarding JetBlue's  
15 and American Airline's Northeast Alliance, correct?

16 A. Yes.

17 Q. And the filing is dated January 7th, 2021, do you  
18 see that?

19 A. I do.

20 Q. You have no reason to doubt that this is an  
21 accurate copy, do you?

22 A. I have no reason to doubt that.

23 Q. And if you turn to the first tab that we've  
24 provided for you at the page Bates number ending in 377.

25 A. (Turns.)

1 Q. You can see that you signed a verification of  
2 truthfulness, subject to legal penalty, on behalf of  
3 Spirit, correct?

4 A. Yes.

5 Q. Turning to the second tab at the top of the  
6 document.

7 THE COURT: You're going faster -- I don't have  
8 binder carriers for me.

9 Where are we now?

10 MS. RIBLET: There are tabs at the top of the  
11 document.

12 THE COURT: No, I can read it. Just what tab are  
13 we?

14 MS. RIBLET: We're at Exhibit 340.

15 THE COURT: Yes.

16 MS. RIBLET: And we're moving to this page that is  
17 Bates number ending in 396.

18 THE COURT: Thank you.

19 MS. RIBLET: No problem, your Honor.

20 Q. So, Mr. Klein, turning to that page, which is the  
21 beginning of Exhibit E to this filing, Spirit told the  
22 DOT that JetBlue is moving away from the LCC business  
23 model and toward the legacy model, right?

24 A. We wrote "JetBlue is moving away from the LCC  
25 business model towards traditional legacy products and

1 partnerships," that's what's on the page.

2 Q. And Spirit pointed out in this document that  
3 "JetBlue fare trends are higher than all its LCC and  
4 ULCC competitors," right?

5 A. They have been overall for a few years. Uh-huh.

6 Q. You made that statement to the DOT based on data  
7 showing that JetBlue's average fares were staying  
8 constant or increasing, right?

9 A. Over this timeframe reviewed, yes.

10 Q. Let's turn to that data analysis you provided to  
11 the DOT which begins at the page Bates number ending in  
12 396.

13 A. (Turns.) I don't think I see data on that page.

14 Q. 398. I'm sorry.

15 A. Oh, yes.

16 Q. So on Page 398, we see a graphic comparing fare  
17 trends between JetBlue and other airlines, including  
18 Spirit, right?

19 A. I do.

20 Q. And it is based on 5 years of average fare data,  
21 do you see that?

22 A. From 2014 to 2019.

23 Q. There's a blue line representing JetBlue, right?

24 A. Yes.

25 Q. And the point you are making to DOT with this data

1 was that JetBlue has maintained and increased average  
2 fares, correct?

3 A. Can you we repeat your question? I'm sorry.

4 Q. Sure. The point you were making, and you can see  
5 it in the heading there, to DOT with this data was that  
6 JetBlue had maintained and increased average fares.

7 A. Yes, that's what we said there.

8 Q. The same data shows Spirit's average fare  
9 decreasing, correct?

10 A. Over this timeframe, that's correct.

11 Q. In fact Spirit has the lowest average fare in  
12 every year depicted, right?

13 A. That would be correct.

14 Q. Mr. Klein, you may set that document aside.

15 And returning to your responsibilities at Spirit.  
16 One of the Spirit departments you mentioned that you  
17 oversee is the airline's pricing organization, right?

18 A. That is correct.

19 Q. So you are familiar with the work done by Spirit's  
20 pricing organization?

21 A. Generally that's correct.

22 Q. And you have ultimate responsibility for the  
23 pricing actions taken by Spirit, correct?

24 A. Their department makes decisions that rolls up to  
25 me, that's correct.

1 Q. And in these decisions rolling up to you, you  
2 direct Spirit's pricing strategy, is that right?

3 A. The strategy I do, yes.

4 Q. As the Chief Commercial Officer, you have to  
5 delegate some responsibilities to others within your  
6 organization, correct?

7 A. Absolutely.

8 Q. Responsibilities like training your employees, is  
9 that fair to say?

10 A. Correct.

11 Q. Please now turn to Exhibit 330 in your binder.

12 A. (Turns.)

13 Q. This is a version of the pricing at Spirit  
14 Airlines' presentation dated June 7th, 2022. Do you see  
15 that?

16 A. I do.

17 Q. Do you have any reason to doubt that this document  
18 was used to train analysts within your pricing  
19 organization at Spirit?

20 A. I wouldn't doubt that. I have no reason to doubt  
21 that.

22 Q. And, Mr. Klein, we've included both the black and  
23 white and color versions of the document in this  
24 exhibit, but I'd like to reference the color version.  
25 So again I'll direct you to the tab that's in your

1 binder or just look at the screen, and let me know when  
2 you've reached Slide 3 in the color version, which is  
3 titled "Spirit's Business Model." And again it is  
4 tabbed for your reference.

5 A. (Turns.) I'm there.

6 Q. Consistent with this slide, you agree that price  
7 drives customer purchase decisions, correct?

8 A. Well, yes. It's one of the things that drives  
9 purchase decisions. Sure.

10 Q. In fact you've described the entire country as a  
11 "highly-priced sensitive customer," right?

12 A. Well --

13 MS. DEARBORN: Objection, vague.

14 THE COURT: Well just because he paused, it seems  
15 to me --

16 Can you answer that?

17 THE WITNESS: Well I think that, um, for the most  
18 part, customers do think about price when they make a  
19 purchase decision.

20 Q. And -- thank you, Mr. Klein.

21 MS. RIBLET: Before I move to the next slide, I'll  
22 note that defendants' counsel have identified some of  
23 this content as confidential. So while the Court and  
24 you, Mr. Klein, will see all material, the public will  
25 see some redactions.

1 Q. I'd like to move to the two slides that are  
2 labeled Slide 5 and Slide 6 in this presentation, these  
3 are both titled "Filing Fares and Two Pricing Systems."

4 A. (Turns.)

5 THE COURT: Bates number?

6 MS. RIBLET: These do not have Bates numbers, your  
7 Honor, but you'll see it's Slide 5 and Slide 6 in the  
8 lower right-hand corner of the slide.

9 THE COURT: Thank you.

10 MS. RIBLET: There is a color version of the  
11 document after the Bates-numbered pages.

12 (Pause.)

13 THE COURT: And the, um, the title of the slide?

14 MS. RIBLET: These slides are both titled "Filing  
15 Fares and Two Pricing Systems."

16 THE COURT: I have it.

17 MS. RIBLET: Thank you.

18 Q. Mr. Klein, these slides reference the ways in  
19 which Spirit publishes its fares, right?

20 A. We reference how they make fares available to the  
21 buying public, sure.

22 Q. One of those ways is through ATPCO, correct?

23 A. Yes.

24 Q. What is ATPCO?

25 A. ATPCO is called the "Airline Tariff Publishing



1 Company."

2 Q. Fares filed on ATPCO are published to all  
3 airlines, right?

4 A. They are available for anyone to see.

5 Q. The left-hand slide references -- the left-hand  
6 slide, which is Slide 5 for reference, makes note of the  
7 fact that "Spirit can file fares on its website that are  
8 not published in ATPCO," correct?

9 A. We can.

10 Q. Including sale fares, right?

11 A. We can.

12 Q. And you understand "visibility" on the second  
13 slide, or Slide 6, as a reference to whether airlines  
14 can see each other's fares, right?

15 A. (Pause.) Can you repeat your question? I'm  
16 sorry.

17 Q. You understand "visibility" on that second slide  
18 to be a reference to whether airlines can see each  
19 other's fares, right?

20 A. Um, in a way I would say that's correct. But in  
21 terms -- well it says its technical team monitors other  
22 airline's fare changes, so it's referencing what we're  
23 looking at, not necessarily what other airlines are  
24 getting at. I'm not sure if I'm answering your  
25 question. I'm trying to.

1 Q. Yeah, I can verify. This slide says that "Spirit  
2 is able to file restricted viewership fares while others  
3 are not." Do you see that?

4 A. Um, yes, it says that.

5 Q. So it takes other airlines more effort to see the  
6 fares that are only on Spirit's website, right?

7 MS. DEARBORN: Objection, foundation.

8 THE COURT: Well she may ask the question in that  
9 form. We'll see what answer he gives.

10 THE WITNESS: Can you repeat the question?

11 THE COURT: So it takes other airlines longer to,  
12 um, access the fares that are, um, on your website?

13 THE WITNESS: Um, that is not necessarily true.

14 THE COURT: Well I asked the question wrong,  
15 maybe.

16 So go ahead. It's your question. Ask a question.

17 Q. It takes other airlines more effort to see the  
18 fares only on Spirit's website, right?

19 A. Um, I don't necessarily think that's accurate  
20 today.

21 Q. They have to go through a process of scraping  
22 Spirit's website to see those fares, right?

23 A. Yes, they do, but that doesn't make it harder or  
24 more complicated in my opinion.

25 Q. Those fares aren't automatically pushed through

1     ATPCO, right?

2     A.     They're not put through ATPCO, but I think that's  
3     different than what you're asking me before.

4           THE COURT:   And that's because "scraping the  
5     website" simply means going to their website and looking  
6     at it, is that right?

7           THE WITNESS:   That's correct.

8     Q.     These slides identify it as an "advantage" that  
9     Spirit has these two pricing systems, right?

10    A.     Yes, I see that.   Uh-huh.

11    Q.     And turning to Slide 10.

12    A.     (Turns.)

13    Q.     Do you see that it's titled "Pricing Philosophy,  
14     Spirit Versus Other Airlines"?

15    A.     Yes, I see that.

16    Q.     So this slide is Spirit's view on how its pricing  
17     philosophy is different from other airlines, right?

18    A.     Um, it's contrasting to separate views, yes, I  
19     agree.

20    Q.     And the first bullet on this slide indicates that  
21     airlines other than Spirit -- the first subbullet,  
22     apologies, on this slide indicates that "Airlines other  
23     than Spirit tend to file a competitive response to every  
24     fare filed in ATPCO."   Have I read that correctly?

25    A.     You have.

1 THE COURT: What are Os and Ds?

2 THE WITNESS: I think of it as a city pair. So if  
3 you want to fly from say Boston to Orlando, that would  
4 be an OAD, an origination to a destination.

5 Q. And speaking of tending to file a competitive  
6 response to every fare filed in ATPCO, historically  
7 that's what you have observed, right?

8 A. Yes, I would say historically that's correct.  
9 Generally.

10 Q. And the second-to-last subbullet point on this  
11 slide says that "Spirit has no obligation to follow the  
12 herd when it comes to large industry initiative." Have  
13 I read that correctly?

14 A. You have.

15 Q. You agree that Spirit prices based on what it  
16 believes is best for Spirit markets, correct?

17 A. I do believe that.

18 Q. Put that document aside now, Mr. Klein.

19 We've just seen in that document that one of the  
20 things that Spirit's pricing organization does is  
21 monitor and evaluate fare actions by other airlines,  
22 correct?

23 A. We do.

24 Q. Spirit evaluates its competitors' fares when  
25 deciding how Spirit should price to the public, right?

1 A. It's an input. It's definitely an input. One of  
2 the inputs.

3 Q. You receive daily reports on industry pricing  
4 activities from Spirit's pricing team, correct?

5 A. I do.

6 Q. Those reports come in the form of an e-mail called  
7 a "Pricing Activity Report," right?

8 A. Yes. Generally, yes.

9 Q. And Leo Lage sends many of these Pricing Activity  
10 Reports, right?

11 A. He does.

12 Q. Mr. Lage is a Senior Pricing Manager at Spirit,  
13 correct?

14 A. He is.

15 Q. He has responsibility for monitoring and  
16 evaluating fare activity by other airlines?

17 A. Um, yes, that's one of his responsibilities. Yes.

18 Q. And separate from his Pricing Activity Reports,  
19 Mr. Lage will also send you information on specific fare  
20 actions by e-mail sometimes, correct?

21 A. From time to time as he feels is appropriate or if  
22 I have specific questions from time to time.

23 Q. I'd like to take a look at one example of those  
24 communications with Mr. Lage regarding pricing actions  
25 by other airline.

1           If you could turn to the document that's been  
2 marked ZN in your binder.

3       A.       (Turns.)

4       Q.       This is an e-mail exchange you had with Mr. Lage  
5 and Eric Monahan on October 29th, 2021. Do you see  
6 that?

7       A.       Yes.

8       Q.       Did you receive these e-mails?

9       A.       Um, yes, I'm assuming so.

10      Q.       You responded to Mr. Lage's e-mails in that chain,  
11 right?

12      A.       Yes.

13           MS. RIBLET: Your Honor, plaintiffs move to admit  
14 as Exhibit 671 the document which has previously been  
15 identified as ZN.

16           THE COURT: No objection?

17           MS. DEARBORN: No objection, your Honor.

18           THE COURT: ZN is admitted, 671.

19           MS. RIBLET: Thank you, your Honor.

20           (Exhibit 671, marked.)

21      Q.       Let's look briefly at the most recent e-mails on  
22 this chain, which are on the top of the page ending in  
23 435.

24           Do you see where Mr. Lage wrote, "We'll see if  
25 this promotes any changes by JetBlue in their own

1 structure, although my feeling is that those fares  
2 JetBlue filed are so low due to competitive pressure  
3 from us."

4 A. (Looks.) I see that it says that. May I read the  
5 e-mail?

6 Q. Sure, certainly.

7 A. (Reads.) So I've caught up now. Can I read the  
8 top part of the e-mail?

9 Q. And I can repeat my question if you want.

10 A. Just give me one more second, please. (Reads.)  
11 Okay. Thank you.

12 Q. And shall I repeat my question?

13 A. Oh, yes, please.

14 Q. Do you see where Mr. Lage wrote "We'll see if this  
15 promotes any changes by JetBlue in their own structure,  
16 although my feeling is that those fares JetBlue filed  
17 are so low due to competitive pressure from us."

18 A. I do see that.

19 Q. And you understand that "us" is Spirit, right?

20 A. Yes.

21 Q. All right, thank you, Mr. Klein. You can set that  
22 document aside.

23 A. Okay.

24 Q. I'd like to spend a little time understanding the  
25 customers who are choosing to fly with Spirit.

1           You would agree that Spirit's customers are  
2       sensitive to the prices they pay for Spirit's products,  
3       correct?

4           MS. DEARBORN: Objection, foundation.

5           THE COURT: Overruled.

6       A.     Can you repeat the question please?

7           THE COURT: You would agree that the prices --  
8       that Spirit's customers are sensitive to the prices they  
9       pay for tickets on Spirit?

10       A.     I think that's correct. I also think that's true  
11       for any leisure customer looking to fly, not just Spirit  
12       customers.

13       THE COURT: Okay.

14       Q.     Let's now take a look at Exhibit 320 in your  
15       binder.

16       A.     (Looks.)

17       Q.     This document is a cover e-mail sent to you dated  
18       June 27th, 2022 attaching a Spirit presentation labeled  
19       "ACPAC meeting, Spirit Airlines." Do you see that?

20       A.     I do, yes.

21       Q.     "ACPAC" references the "Aviation Consumer  
22       Protection Advisory Committee," correct?

23       A.     It does.

24       Q.     And the ACPAC is an organization within the United  
25       States Department of Transportation, is that right?



1 A. Yes.

2 Q. The attachment to this e-mail is a June 28th, 2022  
3 presentation prepared and given by Spirit to the ACPAC,  
4 correct?

5 A. It looks like it, yes.

6 Q. You testified at your deposition that you would  
7 have reviewed these materials before they were provided  
8 to the ACPAC, correct?

9 A. I would have reviewed it.

10 Q. You would have ensured that they were accurate,  
11 right?

12 A. I would have relied on my team to ensure they were  
13 accurate.

14 Q. So you would expect that a Spirit presentation to  
15 the DOT would be accurate?

16 A. Absolutely. At the time, yes.

17 Q. Mr. Klein, we've again provided a prior exhibit in  
18 both black and white and color versions. I'll be  
19 referencing the color version again. We've had the  
20 first page I'll be referencing again for you.

21 If you could turn to that 23rd page of the  
22 exhibit.

23 A. (Turns.)

24 Q. Do you see a slide that is entitled "Spirit  
25 Airlines Target Consumers"?

1 A. Yes.

2 Q. You would agree that this slide distinguishes  
3 Spirit's target consumer from legacy airlines' target  
4 consumers, right?

5 A. Well generally that would have been true at that  
6 time.

7 Q. Spirit's target consumer, it says, "pays for their  
8 own ticket," right?

9 A. Yes, and can I just rephrase that? The legacy  
10 target consumer is a lot of how they, I would say, build  
11 their product, but I believe legacy carriers also just  
12 target consumers. But in terms of their product itself,  
13 it may be geared more that way.

14 Q. I understand.

15 This slide indicates that "price is highly  
16 important to Spirit's target consumer," right?

17 A. Yes.

18 Q. On average legacy fares are higher than Spirit's  
19 fares, correct?

20 A. On average that would be correct. On average.

21 Q. So on average consumers pay more to fly on  
22 legacies than on Spirit, right?

23 A. On average for all the products offered by those  
24 legacy carriers, absolutely. On average.

25 Q. And you would agree that there are some consumers

1     who can't afford these, on average, higher-priced legacy  
2     fares, right?

3     A.     There may be some consumers, if they're going for  
4     a high premium or a highly-priced product, then that  
5     would be correct.

6     Q.     So having the lower fare option of Spirit allows  
7     people to fly who could not afford to otherwise, right?

8     A.     I would say that that's generally accurate.  
9     However if another airline has a low fare, then that  
10    would be available for the same consumers to buy on that  
11    individual transaction.

12    Q.     You may set that document aside as well now.

13            Mr. Klein, in your role at Spirit today, you  
14    oversee the airline's Omni Account Sales Group, correct?

15    A.     I do.

16    Q.     And Spirit's Omni Account Sales Group manages the  
17    airline's ancillary and loyalty products, right?

18    A.     Amongst other things, that's correct.

19    Q.     Let's focus on one of those Spirit loyalty  
20    programs.

21            Spirit has a program called the "Savers Club,"  
22    correct?

23    A.     We do, yes.

24    Q.     Savers Club members pay a subscription fee, is  
25    that right?

1 A. They do.

2 Q. Those Savers Club members can effectively opt into  
3 this program?

4 A. They actually must opt into the program.

5 Q. And once subscribed, Savers Club members are  
6 eligible for discounts on both base fares and ancillary  
7 products, correct?

8 A. On most ancillary products, that's correct. Not  
9 all, but most.

10 Q. Savers Club members don't have to earn status to  
11 get these discounts, do they?

12 A. They do not, they gain that by the annual  
13 subscription fee.

14 Q. So the discounts are available immediately upon  
15 subscription, is that right?

16 A. That is correct.

17 Q. And Spirit allows Savers Club members to apply  
18 their discounts to up to 8 passengers, right?

19 A. Um, I believe that's correct.

20 Q. So the Savers Club can immediately reduce  
21 families's costs to travel, right?

22 A. Yes, and if -- sure if the family is flying with  
23 another Savers Club member.

24 Q. But Savers Club is different from traditional  
25 airline frequent flier or miles program, right?

1 A. Other airlines have programs that are similar. So  
2 I'm not exactly sure how to answer that. If other  
3 airlines have subscription programs, then it would be  
4 the same.

5 Q. JetBlue doesn't have a subscription program like  
6 the Savers Club, does it?

7 A. I'm not familiar either way with that.

8 Q. To your knowledge JetBlue doesn't have a program  
9 like the Saver's Club, do they?

10 A. To my knowledge I don't think so. But I'm not 100  
11 percent certain.

12 Q. And to your knowledge the legacies don't offer a  
13 similar program to the Savers Club, do they?

14 A. Well not exactly to the Savers Club program, but  
15 other legacy carriers do have subscription programs of  
16 their own, just not maybe the exact same type that  
17 Spirit has. But they do have them.

18 Q. I'd like to understand how Spirit's specific  
19 product compares to and has influence to that of other  
20 domestic carriers.

21 Mr. Klein, you've observed other airlines adding  
22 accents of Spirit's business model to their business  
23 model, correct?

24 A. I'm not sure. I think so? I --

25 Q. I can ask a more specific question.

1 A. Okay.

2 Q. Other airlines have introduced a product that is  
3 similar to Spirit called "Basic Economy," right?

4 A. Oh, yes.

5 Q. And Basic Economy fares feature a lower-based fare  
6 with options to add unbundled ancillary products, right?

7 A. Or restrict their ability to add ancillary items.  
8 But, yes.

9 Q. JetBlue now has a Basic Economy product, correct?

10 A. They have one.

11 Q. And you believe that JetBlue introduced its Basic  
12 Economy product in response to Spirit's success, right?

13 A. No, I don't -- I don't know that I think that.

14 Q. Mr. Klein, you recall testifying before a  
15 committee of the United States Congress on March 3rd,  
16 2020, correct?

17 A. Yes, I did.

18 Q. And the testimony you gave to Congress was  
19 truthful, right?

20 A. Sure. Yes.

21 MS. RIBLET: Your Honor, plaintiffs would now like  
22 to play for the courtroom a very brief 4-minute video  
23 that's been marked as Exhibit 120. We'll be pausing  
24 along the way to unpack some of Mr. Klein's testimony.

25 THE COURT: It may be played.

1 MS. RIBLET: Thank you, your Honor.

2 (Plays video.)

3 Q. Mr. Klein, that is an accurate reporting of your  
4 testimony to the United States Congress on March 3rd,  
5 2020, correct?

6 A. I believe so.

7 Q. In your testimony you said that Spirit serves 50  
8 domestic airports and 25 international destinations,  
9 correct?

10 A. Um, yes, I think I said that.

11 Q. Spirit now serves over 90 destinations, correct?

12 A. In total. Presently.

13 Q. You told the committee that Spirit's total prices  
14 are, on average, "more than 30 percent below those of  
15 other airlines on our routes," correct?

16 A. Um, yes.

17 Q. And "total price fare" was a reference to average  
18 bundled fares including ancillary products, right?

19 A. We would be referencing the total fares in  
20 summary, yes.

21 Q. So "total fare," including all ancillary products,  
22 is on average 30 percent lower than the fares of  
23 competitors on Spirit's route?

24 A. Can you repeat that please?

25 Q. Sure.

1           So Spirit's total fare, including all ancillary  
2 products, is on average 30 percent lower than the fares  
3 of competitors on Spirit's routes?

4       A.     At the time of that analysis that would have been  
5 correct.

6       Q.     And Spirit said the same thing to the Department  
7 of Transportation last year, right?

8       A.     We were referencing, likely referencing the exact  
9 same study from back in before covid, 2018 and 2019.  
10 Back then.

11       Q.     Spirit still serves an "underserved segment of  
12 highly-price-sensitive travelers" today, correct?

13       A.     We service a segment of customers, but I'm not so  
14 sure they're underserved at this time, especially  
15 compared to that time period that we're referencing  
16 precovid.

17       Q.     And you mentioned Spirit's "high load factor" to  
18 emphasize that customers are choosing to fly Spirit and  
19 fill those planes, correct?

20       A.     That was definitely true back then.

21       Q.     So let's continue watching.

22           (Plays video.)

23       Q.     Mr. Klein, this portion of your testimony provided  
24 information on Spirit's "Invest in the Guest" program,  
25 correct?



1 A. It did.

2 Q. Could you describe Invest in the Guest for the  
3 Court, please.

4 A. Sure. So Invest in the Guest, um, is something we  
5 embarked upon a number of years ago. The goal behind  
6 that was to provide -- it started off with better  
7 customer service training with our flight attendants.  
8 That went really well. We've always trained our flight  
9 attendants very well on regulatory and safety matters,  
10 but in terms of customer service training, we felt like  
11 we needed to do a little bit more, at least our  
12 customers were telling us that at the time. So we did  
13 that and it was very well-received, and so we expanded  
14 that to the rest of the company as well.

15 And then beyond that we started to think about  
16 other aspects of the product that we could improve upon  
17 to really just make the company better, a natural kind  
18 of evolution of, um, of trying to see what your  
19 customers want and then trying to deliver that to them.  
20 We named it "Invest in the Guest," as we call our  
21 travelers "guests," once they decide to fly with us.

22 Q. As part of Invest in the Guest, Spirit has been  
23 the first domestic airlines to introduce self-bag-drop  
24 machines, right?

25 A. In the United States, to the best of my knowledge,

1     that's right. But I don't know if others have it now.

2     I'm not sure.

3     Q.     So others may have followed Spirit in introducing  
4     self-bag --

5     A.     I'm not really sure. We have it in a limited  
6     number of airports today.

7     Q.     Spirit was the first ULCC to install WIFI across  
8     its fleet, correct?

9     A.     To the best of my knowledge in the U.S., that's  
10    absolutely correct. Yes.

11    Q.     And Spirit was also the first U.S. carrier to have  
12    wheelchair-accessible lavatories installed on most of  
13    its aircraft, right?

14    A.     Again I'm not 100 percent sure of that, but we do  
15    have a lot of wheelchair-accessible lavs installed,  
16    that's correct.

17    Q.     And you believe the Invest in the Guest problem  
18    has been successful, right, Mr. Klein?

19    A.     I think it's been successful in terms of rolling  
20    it out, our execution, the goal behind it. If you're  
21    asking me whether it's been successful? The goal behind  
22    it is to raise the brand reputation and brand awareness  
23    and make sure more customers out there would like to fly  
24    on Spirit and ultimately pay us higher average fares to  
25    generate more revenue.

1           In terms of whether that has been successful, I'm  
2       not so sure. I know that, um, a big piece of success to  
3       me is profitability in generating revenue and being able  
4       to drive higher average fares with it, that's ultimately  
5       the goal. I'm not so sure unfortunately if that's been  
6       as successful as we would like. The execution has been  
7       great. Has it been successful in driving to a goal?  
8       That's probably a little bit harder to say,  
9       unfortunately.

10      Q.     Spirit still cares about improving service for its  
11     customers, right?

12     A.     Absolutely.

13      Q.     And Spirit is continuing to make improvements as  
14     part of Invest in the Guest today, correct?

15     A.     We will always try to make improvements to our  
16     guests for sure.

17      Q.     And Spirit is also continuing to introduce new  
18     ancillary products, right?

19     A.     If we feel like there is a product that, um, the  
20     customer would like to have and we think we can be  
21     profitable doing it, then we'd definitely evaluate that.

22      Q.     Spirit will continue to make these improvements  
23     and ancillary innovations absent the proposed  
24     transaction, correct?

25     A.     I would expect us to.

1 Q. Let's look at the last minute of your testimony.

2 (Plays video.)

3 Q. Mr. Klein, you agree that air travel is still  
4 essential in the U.S. today, right?

5 A. It is essential.

6 Q. And you said that Spirit recognizes that its  
7 product may not be for everyone, correct?

8 A. That's correct.

9 Q. That's because Spirit does not target the premium  
10 market, right?

11 A. No, I wouldn't say that necessarily.

12 Q. Spirit targets the more price-sensitive market,  
13 right?

14 A. Our target would definitely be leisure customers.

15 Q. And finally, you stated that "Spirit drives  
16 savings for all travelers even those who do not fly  
17 Spirit," correct?

18 A. Yes, I did say that and that's definitely, um,  
19 something that I still agree with. As long as other  
20 airlines choose to compete and file low fares, then  
21 they're offering low fares as well. If they choose to.

22 Q. (Pause.) And it is your experience that other  
23 airlines generally choose to compete with Spirit when  
24 Spirit enters a route, correct?

25 A. Um, I think that some airlines do that more than

1 others.

2 Q. All right. Thank you, Mr. Klein.

3 MS. RIBLET: No further questions at this time,  
4 your Honor.

5 THE COURT: Do you wish to question this witness  
6 now or reserve?

7 MS. DEARBORN: I do, your Honor.

8 THE COURT: How long do you think you're going to  
9 take?

10 MS. DEARBORN: Approximately an hour, possibly an  
11 hour and a half. Somewhere in that neighborhood.

12 THE COURT: May we can take the morning recess?

13 MS. WRIGHT: Absolutely, your Honor.

14 THE COURT: We'll take the morning recess until 5  
15 minutes after 11:00.

16 We'll recess.

17 THE CLERK: All rise.

18 (Ends, 10:35 a.m.)  
19  
20  
21  
22  
23  
24  
25

## C E R T I F I C A T E

I, RICHARD H. ROMANOW, OFFICIAL COURT REPORTER,  
do hereby certify that the foregoing record is a true  
and accurate transcription of my stenographic notes  
before Judge William G. Young, on Friday, November 3,  
2023, to the best of my skill and ability.

/s/ Richard H. Romanow 11-03-23

\_\_\_\_\_  
RICHARD H. ROMANOW      Date